Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 302	)	CS Docket No. 96-46
of the Telecommunications Act of 1996	)	
	)	
Open Video Systems	)	

NYNEX OPPOSITION TO PETITIONS FOR RECONSIDERATION

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SUMMARY

The Petitions for Reconsideration filed by the cable incumbents seek to have the Commission reverse its newly-established pro-competitive regulatory framework which is designed to meet the Congressional intent and encourage the development of a viable competitive alternative. The Commission should reject these continuing efforts to reintroduce Title II regulatory procedures which are intended to delay and ultimately frustrate the introduction of Open Video Systems. No credible arguments are presented for the application of time-consuming pre-certification procedures. Nor will the introduction of OVS platforms be encouraged if an OVS operator must overcome impediments presented by local municipal franchise authorities seeking to impose franchise-like obligations of PEG negotiations, build out requirements and pre-OVS certification approvals to use public rights-of-way. The Commission should not accept the suggestion that OVS rate setting be premised on Title II cost studies. The Commission has properly restricted entities permitted to challenge rates to those which are directly impacted by the rates.

Access to quality video programming remains a critical component to the

successful introduction of video competition. The Commission should assure the widest availability to all OVS programmers/packagers of programming from vendors, many of whom are currently affiliated with cable operators who continue to oppose the introduction of competitive video services.

The Commission should not abandon its approach. It should continue to pursue the implementation of Congress' goal to allow OVS operators the flexibility to enter and compete in the video marketplace under reduced regulatory burdens.

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NYNEX Corporation (hereafter "NYNEX") hereby submits its Opposition To Petitions For Reconsideration of the Second Report and Order ("OVS Order")[1] in the above-referenced proceeding. The Commission took great strides in the OVS Order towards creating a regulatory framework designed to encourage and facilitate local exchange carriers ("LECs") and others in the establishment of open video systems ("OVS"). In doing so, the Commission not only followed the language of the statute, but also the Congressional intent behind the statute. Specifically, it avoided both the detailed, front end-loaded Title II-type regulations that doomed efforts to establish LEC video dialtone systems, and the "franchise-

[1] Second Report and Order, CS Docket No. 96-46, released June 3, 1996.

like" municipal requirements which have largely led to only one, monopolistic wireline video services provider per franchise area. Further, the OVS Order began to take the necessary first steps toward unlocking the existing cable company constraints on access to current programming

Although we believe that there are certain limited revisions that should be made,[2] we applaud the Commission for the overall pro-competitive approach shown in the OVS Order. Now, however, a host of requests from others for major changes in the OVS regulatory regime ask the Commission to reconsider and impose regulatory and other constraints which it properly rejected earlier. These proposals threaten to reverse the Commission's earlier approach. The Commission should reject them and stay with the pro-competitive course it properly established.

I. THE COMMISSION SHOULD NOT ENCUMBER OVS DEVELOPMENT WITH ADDITIONAL AND UNNECESSARY REGULATIONS

A number of petitioners offer ad hoc proposals for regulatory restraints on OVS certification, operations, marketing and even organizational structure which would, and perhaps are intended to, delay and derail the rapid development and implementation of OVS by those potentially interested in investing in this new,

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[2] See NYNEX Petition For Reconsideration, filed July 5, 1996, seeking modification of the OVS Order only to: (1) exclude affiliated programmer revenues from the basis for "in lieu of franchise" fee payment calculations; and (2) to apply the statutory nondiscrimination requirements for OVS "navigational devices, guides and menus" to OVS operators, but not to operator-affiliated program providers.

competitive mode of provisioning wireline video services. Further, others seek to reassert Title II-type rate regulation. The adoption of these proposals is unnecessary and, in fact, contrary to the Commission's pro-competitive purpose and Congress' direction that it "encourage" OVS implementation.[3]

A. OVS Certification

Several parties ask the Commission to interpose additional hurdles for prospective operators to overcome in the certification process. The National Cable Television Association ("NCTA") for example asks for prior "affirmative approval" of the certification application, while the Village of Schaumburg ("Schaumburg"), Alliance for Community Media, et. al. ("Alliance") and Metropolitan Dade County ("Dade") ask that all right-of-way ("ROW") authority be granted before certification.[4] MCI wants the Commission to "require telephone companies seeking OVS status to publicly file incremental and stand alone telephone and video cost studies, along with appropriate subscriber and usage data as part of their OVS applications."[5] There is no basis in these arguments to modify the OVS Order, only an interest in making the certification process more arduous in order to gain competitive or negotiating advantage.

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[3] Telecommunications Act of 1996 Conference Report, S. Rep. 104-230 at 178 (February 1, 1996) ("Conference Report").

[4] NCTA 2-3; Schaumburg, Alliance 17-18, and Dade 4-5.

[5] MCI 6

NCTA essentially argues that the Commission fails to meet its statutory requirement to approve certification requests. In fact, NCTA simply does not care for the carefully considered and specifically tailored procedures which the Commission has put in place to facilitate prompt approvals.[6] NCTA and MCI would prefer that the Commission reestablish the time-consuming and exhaustive Section 214 procedures that cable interests seized upon to break the back of video dialtone as a prospective competitor. Based on this experience, the Congress specified the tight window for Commission action that NCTA and MCI now challenge, and specifically rejected the Section 214 approval process that they seek to revive.[7] As above, Congress also directed the Commission "to encourage" the development of OVS. The Commission has properly done so with respect to the specific certification requirements and procedures established in the OVS Order.

Schaumburg and Dade argue that prior ROW approvals are necessary before certification to ensure against wasted Commission efforts, i.e., certifications which cannot be implemented because ROW authority is lacking. However, the Commission should not allow these issues to be dragged before it as a means of adding leverage to partisan interests by slowing down OVS rollout. The

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6 OVS Order at paras. 27-36.

7 See, Sections 653(a)(1) and Section 651(c).

Commission has properly balanced competitive and ROW interests in the OVS Order.[8]

B. Channel Capacity Availability

NCTA also requests that a nationwide set of rules for channel allocations should be established.[9] The argument for such an approach is that it will save programmer resources in discussions with each OVS operator. It is not shown by any means that the proposal offers a substantial prospective benefit to any party, because programmers and individual OVS operators must discuss numerous topics in any event. In contrast, there would be a real and substantial loss resulting from the delay required for the Commission to determine "national standards." This would also be contrary to the statutory direction that Commission rules for OVS must be in place within six months of the enactment.[10] Finally, it would be poor policy in any event to stifle operator flexibility and creativity in the initial, "new entrant" phases of OVS design and implementation.[11] Obviously, much can be learned from allowing different approaches in the marketplace.

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8 OVS Order para. 34.

9 NCTA 17-18.

10 Section 653(b)(1).

11 See, Conference Report at 178 (supportive regulatory treatment of OVS as "new entrant" intended by Congress).

Two parties also seek to reargue the issue of requiring OVS operators to provide channel capacity to the incumbent cable company monopolist.[12] Their arguments have earlier been made, and were dealt with at length and persuasively rejected.[13] In short, Section 653(a)(1) permits the Commission to use its judgment to reject their proposal "consistent with the public interest, convenience and necessity,"[14] and sound policy favoring the expansion of consumer choice and programming diversity (rather than the contraction of alternatives) underlies the Commission's ruling. The Commission should not adopt proposals which will require that incumbent cable companies be provided with additional capacity, thereby denying other prospective tenants and potentially the operator itself of competitive opportunities. Instead, these entrenched incumbents should be encouraged to create additional capacity and video services in the marketplace.[15]

C. Satisfying The PEG Requirements

Comcast and NCTA ask the Commission to reverse its decision providing for OVS operator access to the PEG programming feeds of the incumbent cable

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[12] Cox 6-8, NCTA 8-10.

[13] OVS Orders at paras. 51-56.

[14] Section 653 (a)(1).

[15] Similarly, the Commission's ruling does not give the operator unlawful "editorial control" over more than one-third of the capacity (NCTA 9). In fact, the one-third constraint only arises where total demand exceeds capacity. By law, programmers not selected by the operator and its affiliates are making use of two-thirds of the OVS in these circumstances (Section 653(b)(1)(B)).

company, in certain circumstances.[16] They argue under the theory that it can be difficult and costly to reach PEG agreements with franchise authorities, and that the Commission should require OVS operators to endure the same difficulties. Simply stated, this is little more than an expression of the old adage that "misery loves company." However, the Commission has wisely and properly sought to limit, rather than expand, this "misery." It recognizes that OVS operators are not required to negotiate franchises but are required to provide PEG program access. Accordingly, the Commission reasonably concluded in the OVS Order that such programming could best be accessed from the incumbent cable company.[17]

Further, the Commission understood that such programming was not without cost to the cable company. Therefore, it provided for cost sharing. Thus, the Commission's decision rests on the sound principles that it is not efficient to require that a burden be suffered twice where it can be satisfied once, and it is not unfair to either entity to require that it be shared.[18]

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[16] Comcast 8-12; NCTA 16.

[17] OVS Order at paras. 141-142, 145-146.

[18] Id. at para. 145 "([W]e believe that connection and cost sharing will ease the financial burden on both the cable and the video system operators, without diluting the number and quality of PEG access channels received by the community.")This approach does not burden cable companies with obligations as "PEG utilities" (NCTA 16). Instead, it reduces their contractual franchise burden through cost sharing. Importantly, however, it is precisely because the incumbent monopolist cable company may take the "scorched earth" approach to such sharing that the petitioners espouse here, that the Commission's determination to lighten the burdens on all providers and their customers is most appropriate.

The National League of Cities ("Cities") appear to contend that this is not an issue of a common burden being shared, but rather of two distinct burdens, with one being wrongly lifted from OVS.[19] The illogic of this argument can readily be shown. The necessary precondition for the Commission's shared burden approach is that (1) the cable company and OVS operator offer service in the same community; and (2) the appropriate PEG requirement for the cable company is established. In these circumstances the decision of "what PEG" should be carried to households in the community *has already been set*. Clearly, whether OVS or cable systems serve these same households, the appropriate PEG programming remains the same. Therefor, there is only one PEG burden for all wireline video service providers in the community, not different burdens depending on the identity of the service mode used, i.e., cable system or OVS.

D. Handling Must Carry For Local Broadcasts

The Association of Local Television Stations urges that rules be established to preclude operators of multi-market open video systems from carrying required "must-carry" local programming into other areas without retransmission consent. In effect, this proposal first presupposes a problem and then seeks Commission action to regulate against it. It presupposes: (1) an operator's decision to build OVS; (2) the buildout of this OVS on a vast geographic, supersystem basis; (3) the

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[19] Cities 14-15.

absence of agreement by the parties involved as to how to handle programming over the markets encompassed by such a supersystem: and (4) the absence of ability in the still-to-be-developed technology to handle this issue effectively, e.g., to carry programming to households on a selective, "addressable" basis. Clearly the Commission must avoid developing stringent regulatory solutions to such speculative problems, if OVS is to avoid the dismal fate of video dialtone systems. Instead, the OVS operators and the parties involved should be afforded the flexibility to address issues as they arise. Only when -- and if -- there proves in fact to be an irresolvable issue among the parties should the Commission assume an active regulatory role, and then hopefully more as a mediator than as an arbitrator.

E. OVS Marketing/Structural Constraints

AT&T and the Coalition Parties urge the Commission to reconsider its decision not to impose costly and inefficient joint marketing restraints and separate subsidiary requirements on local exchange carriers providing OVS.[20] Both rest their arguments on speculative "cross-subsidization" concerns. Simply stated, each provides no new reason for the Commission to reconsider the OVS Order.

AT&T argues that its earlier position that "bundling" of telephone and video services raises too great a prospect of cross-subsidization, was not

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[20] AT&T 1-5; Coalition Parties 2-4.

adequately considered (AT&T 3). But the Commission has specifically considered and properly rejected its overall argument.[21] However, in response, the Commission also placed two specific restrictions on bundled services, including the requirement that "the LEC must impute the unbundled tariff rate for the regulated service" when offering "a discount for purchasing the bundled package."[22] AT&T offers no new basis for reconsidering a decision already carefully made in the OVS Order.

The Coalition Parties again urge the Commission to establish a separate subsidiary requirement, even though Congress specifically refrained from doing so. Their argument that the Commission has the power to do so at best misses the mark. The Commission clearly and properly determined that Congress closely considered the issue of when a separate subsidiary should be required, and did not require such separation for the LEC provision of OVS.[23] Even assuming arguendo that the Commission has the power to supersede this Congressional judgment, which NYNEX does not concede, the Commission should not seek to impose regulatory constraints and operating inefficiencies on OVS without compelling

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[21] OVS Order at para. 248.

[22] Id.

[23] OVS Order at para. 249.

cause shown. To do so is to harm, not help consumers. The Coalition Parties offer no reasonable basis to modify the OVS Order as they request.[24]

F. Rate Regulation

MCI asks the Commission to reverse many of the key determinations which the Commission has made to craft a rate regulation scheme suited to OVS as "new entrants" without any marketshare or power. It asks inter alia for "telephone companies seeking OVS status to publicly file incremental and stand alone telephone and video cost studies, along with appropriate subscriber and usage data as part of their OVS applications."[25] These proposals were earlier made and properly denied.[26] In effect, MCI wants to establish the full panoply of Title II rate regulations for OVS which were specifically rejected by Congress.[27] As the Commission properly observed:

> "Congress' incentive for such [telephone company OVS] entry was not only exemption from particular requirements of Title VI, but that streamlined Title VI obligations apply in lieu of, and not in addition to, any requirements under Title II." (emphasis added).

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[24] Indeed, the Coalition Parties rest their position on the speculation that "the current cost allocation proceeding . . . may not ultimately lead to effective cost allocation rules" (p. 4). Such speculation comes nowhere near providing a reasonable basis for imposing inefficiencies on OVS operators and the resulting costs on consumers.

[25] MCI 6.

[26] OVS Order at paras.. 120; ("MCI's approach would contravene Congress' intent that open video systems not be subject to extensive Title-II like regulations.")

[27] Section 653(c)(3).

MCI also suggests that there are flaws in the Commission's approach to rate review using the Efficient Component Pricing Rule ("ECPR"). However, MCI does not offer any specifics, except to propose ILECs "charge video carriage rates in excess of the incremental cost of providing video services."[28] A far better approach to ECPR is detailed in the Joint Parties' petition, if ECPR is to be used at all.[29] MCI's proposal, on the other hand, would again take the Commission back to Title II regulation. It should be rejected.[30]

Finally, MCI also asks the Commission to modify its decision to sanction efforts of third-parties to complain against OVS rates.[31] By definition, these are not the complaints of "a programming provider that has sought carriage on the open video system;" such complaints are permitted by the Commission.[32] There is considerable adverse experience in proceeding as MCI proposes. The Commission is well aware of the fatal blows that the "public interest complaints" of competitors dealt to video dialtone proposals. In fact, nearly all -- if not entirely all -- challenges against video dialtone were raised by incumbent cable interests and

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28 MCI 6.

29 Joint Parties 8-10, and accompanying Declaration of William E. Taylor.

30 NCTA petitions for a change in the Commission's determinations as to the burden of proof in complaint cases. NCTA 18-19. It offers no substantive basis for reconsideration of the Commission's determination "that primary reliance on a 'presumption' approach best achieves these goals." OVS Order at para. 114.

31 MCI 3-4.

32 OVS Order at para. 128.

their affiliated programmers, not by unaffiliated programmers. It is these latter interests that the Commission has focused on in designing OVS rate rules. It has and should continue properly to focus on its efforts on enabling OVS to serve such unaffiliated programmers, and it should not countenance the regulatory tactics of competitors to impede OVS development and implementation.

II. PROGRAMMING RIGHTS/ACCESS

A. Network Non-Duplication and Syndicated Program Exclusivity

In its Request for Clarification, the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League and the National Hockey League ("the Leagues") clearly illustrate why the OVS operator should not be responsible for assuring compliance by programmers and packagers with syndicated exclusivity (47 CFR §76.1508) and network non-duplication (47 CFR §76.1509) rules. The League also identifies additional concerns for "sports deletions" which "can happen sporadically, any day of the week..."[33]

The proposed rules impose the obligation on the OVS operator to make all notifications and information regarding the exercise of network non-duplication and syndicated exclusivity rights immediately available to all appropriate video programming provider[s] on the system. 47 CFR §76.1508(c) and 47 CFR

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[33] League 3.

§76.1509(c). The OVS operator is not subject to sanctions for violation of these rules by unaffiliated programmers if the operator provided proper notices to the program supplier and subsequently took prompt steps to stop the distribution of the infringing program. Id.

The League asks that the Commission "make clear that the OVS operator is required to ensure compliance with the sports rule and that responsibility is not satisfied simply by passing along sports rule notices to the packager and by taking steps after the violation occurs."[34] In reality, the OVS operator cannot "ensure compliance." The only action available to an OVS operator is to provide notices to video programmers and packagers. It is the responsibility of the programmers/packagers to block the distribution of the signal.

In some cases, a programmer/packager may disagree with the program vendor's assertion of network non-duplication or syndicated program exclusivity rights. Resolution of the disagreement should be between the programming vendor and the programmer/packager. The OVS operator is powerless to resolve or mediate the dispute and may be subject to claims of liability either from the programmer/packager if it blocks the signal transmission or from the programming vendor if it does not block the signal and the programmer/packager distributes the broadcast to its customers.[35] The relationship should be between the video

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[34] League 3.

[35] See, US West 5.

programming vendor and the individual programmer/packager to negotiate mutually agreeable notice procedures for the exercise of network non-duplication and syndicated program exclusivity rights.

B. Program Access Rules Applicable to OVS Programmers

In its Petition for Reconsideration, Rainbow Programming Holdings, Inc. ("Rainbow") once again demonstrates its proclivity to use a refusal to accord reasonable access to programming to others as a mechanism to skew the competitive market in its favor. Rainbow challenges the Commission's extension of program access rules to video programming providers on Open Video Systems. Rainbow's expressed concern for the adverse impact on the viability of OVS if Rainbow is forced to make its programming available to others must be seen as entirely gratuitous.

Section 628(j) of the Act applies program access obligations of a cable operator "to a common carrier or its affiliate that provides video programming by any means directly to subscribers." It is, therefore, entirely possible that Rainbow might assert access rights to programming of the OVS operator or its affiliated programmer while, at the same time, denying the affiliated programmer access to Rainbow's "proprietary" video programming.[36] Access to programming is a

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[36] Rainbow continues to be subject to the program access obligations of Sec. 628(c)(2)(C) of the Act and 47 CFR § 76.1002. Rainbow may not engage in practices, including exclusive contracts, to prevent other programmer/packagers on the OVS platform from obtaining Rainbow's programming.

fundamental precondition to the development of competition in the video marketplace. The Commission's Order correctly balances program access requirements between programmer/packagers on an OVS system.

III. MUNICIPAL CONTROLS

A. Miscellaneous Municipal Regulations

The County Council of Howard County ("Howard") proposes that the Commission impose a two-year build-out requirement for areas with minimum densities of ten dwelling units (occupied or unoccupied) per mile of street with a proposed procedure for obtaining advance concurrence for any deviation from the requirement.[37] Municipal Administrative Services, Inc., et. al. ("MAS") seek to impose franchise obligations for use of public rights-of-way and to be given notice of an OVS certification filing.[38] Schaumburg seeks to impose a condition that the OVS operator obtain local approvals "before (or as a condition of) FCC certification as an OVS operator."[39] Dade seeks authority "to implement and enforce consumer protections provisions for its residents using OVS services."[40]

In enacting legislation implementing the OVS option for the provision of video programming, Congress specifically exempted OVS from application of Part

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[37] Howard 2.

[38] MAS 6-7.

[39] Shaumberg 1.

[40] Dade 4.

III, municipal franchise regulation Section 653(c)(1)(C). The proposals offered by Howard, MAS, Schaumburg and Dade are all efforts to re-introduce vestiges of municipal franchise regulation and obligations. Those proposals should be rejected by the Commission.

B. Calculation of "Gross Revenue"

Dade and Schaumburg challenge the Commission's calculation of "gross revenues" upon which the OVS operator will pay a fee in lieu of franchise fees. Dade believes the Commission's formula "will create a risk of two-thirds reduction in fees" because the calculation does not include "revenues derived from subscribers or advertisers that pay directly to a third party programmer."[41] There are currently no OVS systems in operation. Dade is not currently receiving any OVS payments and is not, therefore, facing a risk of two-thirds reduction in fees.

Schaumberg states that "Gross revenues should include all revenues derived from the operation of the open video system, regardless of the organization that receives them."[42] NYNEX has previously addressed the inequities inherent in imposing the fee obligation on only affiliated programmers. In its Petition For Clarification, U S West, Inc. proposes that the Commission allow OVS operators to include a portion of the fee payment on the bill of all subscribers receiving

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41 Dade 3.

42 Shaumberg 2.

video programming over an OVS.[43] NYNEX recommends that the Commission adopt the proposal outlined in NYNEX's Petition for Reconsideration of including gross revenues of the OVS operator from providing service to all OVS video programming providers, whether affiliated or unaffiliated. That payment is most consistent with the statute and does not impose undue discriminatory burdens on programmer/packagers.

C. Infringement of Local Franchising Authority

The "Cities" after first characterizing the Commission's Order as "misguided," stridently advise the Commission to "refrain from attempting to intrude upon state and local right-of-way relationships with OVS operators."[44] Describing the Commission's Order as "far from a model of clarity," the Cities challenge the preemption of local franchising authority.[45] The Cities' arguments are premised on a fundamentally flawed misunderstanding: the source of franchising authority exercised by cities over cable systems is conferred by Part III of Title VI of the Communications Act, 47 U.S.C. §621 et. seq. The Congressional intent not to confer similar franchising authority applicable to OVS could not have been more clearly stated in the 1996 Telecommunications Act. With certain very limited exceptions, Congress stated in Section 653(c)(1)(C) that

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[43] US West 8.

[44] Cities 1-2.

[45] Id.

franchise obligations of Title III "shall not apply" to OVS. The Commission's June 3, 1996 Second Report and Order does not, therefore, preempt local franchising authority because Congress never conferred that authority. The Congressional intent not to confer franchising authority is further evidenced by the inclusion in Section 653(c)(2)(b) that an OVS operator "may be subject to the payment of fees on the gross revenues of the operator...in lieu of the franchise fees permitted under section 622." There can be no clearer declaration of Congressional intent that municipalities do not possess franchise authority over OVS.

The Cities proceed to compound their erroneous interpretation of the 1996 Telecommunications Act by reciting a litany of mechanisms currently being employed to obtain "in-kind" compensation and services from cable operators in excess of the maximum 5 percent franchise fee authorized by Section 622 of the Act.[46] The Cities then assert that collection of even the payment in lieu of franchise fees will not compensate for the "massive costs" which local governments will incur in accommodating OVS and imply that OVS will be

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[46] Cities 7-8. In United Artists Cable of Baltimore, FCC 96-188, released April 26, 1996, the Commission affirmed the Order of the Cable Services Bureau that franchise fees collected by the cable operator are not to be included in calculating "gross revenues" subject to franchise fees.

expected to fully compensate local governments, even in excess of the 5 percent limit applicable to cable operators.[47]

In its Memorandum Opinion and Order in United Artists Cable of Baltimore, FCC 96-188, released April 26, 1996, the Commission acknowledged the Congressional concern of local franchising authorities attempting to evade the 5 percent limit:

> "We further note that Congress has exhibited a strong desire to prevent attempts by local franchising authorities to evade the statutory five percent cap on franchise fees. During floor debate on the 1984 bill, Senator Goldwater pointed out that 'the overriding purpose of the 5 percent fee cap was to prevent local governments from taxing private operators to death as a means of raising local revenues for other concerns. This would be discriminatory and would place the private operator/owners at a disadvantage with respect to their competitors.' As Senator Goldwater stated, '[i]t was the intent of the committee, in crafting this definition [of 'franchise fees'], to prevent cities from circumventing the 5 percent cap on franchise fees as set out in the bill by establishing a new sort of tax on cable operators or subscribers.'" Para 17.

The Cities cannot assume that Congress was ignorant of this earlier concern when it specifically exempted OVS from local franchise requirements and provided, instead, for a payment in lieu of franchise fee.

IV. CONCLUSION

In the OVS Order, the Commission charted the proper course of allowing OVS operators and interested programmers the regulatory flexibility to create and

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[47] Cities 9-12.

develop a new model for wireline video services competition to monopolistic cable system operators. As discussed above, various parties generally opposed to the OVS alternative in concept have now petitioned the Commission to abandon that approach to preclude that flexibility, to involve itself in detailed regulation, and to sanction their efforts to deny or derail OVS implementation.

The Commission clearly and properly began the OVS Order with the statement:

> "We believe that the best way to achieve Congress' goals is to give open video system operators the flexibility to enter and compete based on the demands of the marketplace. Our approach reflects the reduced regulatory burdens envisioned by Congress for open video systems." (para. 3).

NYNEX urges that the Commission stay the course it began in the OVS Order, and to deny these petitions.

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